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FOREWORD: THE ART OF INTERNATIONAL LAW

Michael P. Scharf¹

Katie Steiner²

I.

Anyone who has seen “Monuments Men” starring George Clooney and Matt Damon, or “Woman in Gold” with Helen Mirren, knows that return of stolen art is fodder for great films. But today even more compelling stories at the intersection of art and international law are unfolding across the globe.

The international community is currently struggling with how to deal with actions by ISIS and al-Qaeda to destroy cultural treasures throughout the Middle East. Meanwhile, countries around the world are locked in international disputes about repatriation of famous artworks, ranging from the Parthenon sculptures known as the Elgin Marbles to the relics of Machu Picchu.

Art is big business. Global sales of arts and antiquities surpassed \$66 billion in 2014.³ And art controversies are a growing concern for the international community.

Consequently, on September 16, 2016, Case Western Reserve University School of Law’s Frederick K. Cox International Law Center, in conjunction with the celebration of the Cleveland Museum of Art’s centennial anniversary, convened a day-long conference with leading scholars and practitioners from around the world to explore topics at the intersection of art and international law. The archived webcast of the Symposium is available for viewing anytime at: <http://law.case.edu/Lectures-Events/EventId/1/e/the-art-of-international-law-16-sep-2016>.

This symposium issue of the *Case Western Reserve Journal of International Law* contains eleven articles generated from the Art of International Law conference. The volume also reproduces the 2016 Klatsky Endowed Lecture in Human Rights, featuring the U.N. High Commissioner for Human Rights, with an introduction commemorating the 15th anniversary of the lecture endowment. In addition, the volume

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1. Dean of the Law School and Joseph C. Hostetler – BakerHostetler Professor of Law, Case Western Reserve University School of Law.
 2. Editor in Chief, *Case Western Journal of International Law*, JD 2017.
 3. Katya Kazakino, *Art Market Nears Record with \$66 Billion in Global Sales*, BLOOMBERG (Mar. 12, 2014), available at <https://www.bloomberg.com/news/articles/2014-03-12/global-art-market-surged-to-66-billion-in-2013-report>.

includes a transcript of the “Talking Foreign Policy” broadcast devoted to repatriation and contemporary cultural-property protection efforts. Finally, the volume contains four Notes by student editors of the *Journal* on current issues in international law.

II.

The volume’s symposium content proceeds in four sections, beginning with an article by Margaret M. Miles, Professor of Art History and Classics at the University of California, Irvine, who delivered the Keynote Address. Professor Miles’s article traces the theory and practice of restituting cultural objects from ancient times through the present, providing a context for modern-day conversations on the topic.

The second group of symposium articles stem from a panel addressing criminal responsibility for acts of cultural destruction, which featured a discussion among Shannon French, Director of the Inamori International Center for Ethics and Excellence, Professor of Philosophy, and Professor of Law at Case Western Reserve University; William Schabas, Professor of International Law at Middlesex University London School of Law; Milena Sterio, Associate Dean and Charles R. Emrick Jr.–Calfee Halter & Griswold Professor of Law at Cleveland State University’s Marshall College of Law; and Paul Williams, Rebecca I. Grazier Professor of Law and International Relations at American University’s Washington College of Law and President of the Public International Law and Policy Group. Professor Schabas’s article addresses the destruction of religious and historical structures in Timbuktu and the Rome Statute’s shortcomings in holding the perpetrators responsible. Focusing on the same incidents in Mali, Professor Sterio’s article explores the impact of the International Criminal Court’s proceedings against the responsible parties. Also weighing in on the situation in Mali is Mark Ellis, Executive Director of the International Bar Association, whose article considers best practices in the international community for addressing cultural destruction. Turning to the issue of looting, Professor Williams’s article, co-authored by Christin Coster, explores how the market for stolen goods funds terrorism.

The third group of symposium articles stem from a panel celebrating the faculty, practitioner, and student honorees of the 2016 writing competition on “Ethics, Art, and International Law,” organized by the Case Western Reserve University Law School Center for Professional Ethics. Cassandra Robertson, Professor of Law, Laura B. Chisolm Distinguished Research Scholar, and Director of the Center for Professional Ethics at Case Western Reserve University, moderated the discussion among Alyssa R. Bickford, law student at the University of Oklahoma College of Law; Felicia Caponigri, Attorney at Law; Alice Fabris, Attorney at Law; and William Worster, Assistant Professor of International Law at the Hauge University of Applied Sciences. Ms.

Bickford's article, which received the competition's prize for best student paper, considers a painting in the collection of Oklahoma University's Fred Jones Jr. Museum of Art that is the subject of a World-War-II-era repatriation claim. An article by Deming Liu, Lecturer in Law at Newcastle University Law School, who won the faculty prize, explores the issue of moral rights and provides a comparative study of American and British approaches to public-sculpture protections. Professor Lui's article is slated for publication in 2018. Ms. Caponigri's article considers the ethics of exhibiting fashion in both non-profit and for-profit museums in the United States and Europe. Lastly, Ms. Fabris's article addresses cultural-property restitution among South-American nations.

The fourth and final group of symposium articles stem from a panel dedicated to repatriation, which featured a discussion among Dale Nance, Professor of Law at Case Western Reserve University; Allan Gerson, Counsel to United States U.N. Ambassadors Jeane Kirkpatrick and Vernon Walters and Chair of AG International Law PLLC in Washington, D.C.; John Humbach, Professor of Law at Pace Law School; and Jennifer Kreder, Professor of Law at Northern Kentucky University's Chase College of Law. Mr. Gerson's article considers the repatriation litigation surrounding Vincent van Gogh's *Night Café*, housed at the Yale University Art Gallery. Professor Humbach's article addresses property law and the social practice of ownership as they interact with works of art. Finally, Professor Kreder's article contextualizes World-War-II repatriation disputes by providing a history of German and Russian looting.

In addition to the symposium content, this volume of the *Journal of International Law* reproduces the 2016 Klatsky Endowed Lecture in Human Rights delivered at Case Western Reserve University Law School by Prince Zeid Ra'ad Al Hussein, U.N. High Commissioner for Human Rights. An introduction by Mr. Bruce J. Klatsky, former member of the Case Western Reserve University Board of Trustees who endowed the annual Lecture, accompanies the piece. The volume also features an edited transcript of a production of "Talking Foreign Policy," a current-affairs radio program produced by Cleveland's NPR affiliate, WCPN 90.3 FM ideastream. The September 2016 program installment featured host Michael Scharf and guests Paul Williams, Mark Ellis, William Schabas, Shannon French, and Milena Sterio discussing case-studies in repatriation, ranging from the Parthenon sculptures, Peruvian artifacts, and art confiscated during World War II. The archived broadcast is available at: <http://law.case.edu/TalkingForeignPolicy>.

Finally, this volume includes four Notes written by graduating staff members of the *Journal of International Law*. The first, written by Executive Articles Editor and Production Editor Judd Cohen, examines the Trans-Pacific Partnership's shortcomings in improving labor standards. Mr. Cohen's Note received the *Journal of International Law*

Distinguished Note Award. The second, written by Senior Editor Sarah Katz, centers on the European Union's refugee crisis and proposals for processing asylum applications. The third, written by Senior Editor Rush O'Connor, examines the ways in which nations with shared water sources can develop transboundary agreements to protect their citizens' water rights and resolve disputes peacefully. The fourth, written by Editor-in-Chief Katie Steiner, addresses the impact that Switzerland's regulations on duty-free warehouses may have on the global art market.

III.

Many students, scholars, practitioners, supporters, and advisors made Volume 49 of the *Journal of International Law* possible. We would like to thank all participants and organizers of the Art of International Law conference on September 16, 2016, for helping to make the day a success. We also thank the Wolf Family Foundation for its generous support of the conference, as well as the Frederick K. Cox International Law Center, the American Society of International Law, the Inamori Center for Ethics and Excellence, the Spangenberg Center for Law Technology & the Arts, and the Center for Professional Responsibility for co-sponsoring the conference. Last but certainly not least, we thank the student editors of the *Journal of International Law*, who worked tirelessly to make this publication possible.

In closing, we are pleased to announce that in 2018, the *Journal of International Law* will celebrate its 50th anniversary with the publication of a symposium issue dedicated to criminal and civil liability of corporations for Human Rights Violations.